

ANDOVER BOARD OF HEALTH
Minutes
October 21, 2013, 6:00 P.M.
CD&P First Floor Conference Room
36 Bartlet Street

The Board of Health Meeting was called to order at 6:03 p.m. Present were Ms. Candace B. Martin, Chairman, Ms. Katherine Kellman, Vice-Chairman, Dr. Gopala K. Dwarakanath, Clerk, and Mr. Thomas G. Carbone, Director of Public Health.

I. Approval of Minutes

- **September 16, 2013**

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to approve the Minutes of September 16, 2013. Unanimous approval.

II. Appointments & Hearings

- **6:00 p.m. – Jeffrey Wise for Pizza Connection – Show Cause Hearing to Revoke Food Permit (Continued)** – Mr. Carbone informed the Board that Mr. Wise sold the establishment and a new owner will be taking over the restaurant under a new name.

Motion by Ms. Martin, seconded by Ms. Kellman to close the Show Cause Hearing taking no further action. Unanimous approval.

- **6:05 p.m. – Condemnation Hearing for 55 Harold Parker Road, Failed Septic System** – Present was Mr. John Grasso who is the owner of 55 Harold Parker Road as well as a Licensed Disposal Works Installer with the Town of Andover. Since last meeting he had an engineer design a new system, test holes were done, and the permit has been issued. Mr. Grasso intends to do the installation this month. Mr. Carbone recommended that the Board continue the Condemnation Hearing to the next Board of Health Meeting in November, and if the Certificate of Compliance is done, close the Hearing at that point. Mr. Grasso stated that he needed about a week to complete the system.

Motion by Ms. Martin, seconded by Ms. Kellman, to continue the Condemnation Hearing for 55 Harold Parker Rd. to the November 18, 2013 Board of Health Meeting with the expectation that the system is upgraded and the Certificate of Compliance is issued prior to the Board of Health Meeting. Unanimous approval.

- **6:10 p.m. – Consumer Solutions REO, LLC for 5 Oak Street – Show Cause Hearing to Repair a Failed Septic System** – Present was Attorney James F. Creed of Creed and Formica representing Consumer Solutions REO, LLC. Mr. Carbone informed the Board that this is one of the failed septic systems he uncovered when cleaning out files. Over the past 5 years, Mr. Carbone has issued ORDERS to owners

to perform a septic upgrade. After a conversation, Atty. Creed sent Mr. Carbone a Brief today which he gave to the Board Members to add to packet.¹ The system failed in 2001. The mortgage holder has foreclosed and Creed and Formica was then hired evict the homeowners and the trial is on Thursday. There are other legal issues as well, and the homeowners refuse to leave the property. If they succeed in the eviction, they will then winterize the house. Ms. Martin asked if this means the condemnation can't happen. Mr. Carbone replied that the Board would need to do a notification of the occupants and tenants. Atty. Creed stated that his Hearing is so close, the Board may like to wait and see what happens on Thursday and then put this issue on the next Board of Health Meeting in November. He stated that he would keep Mr. Carbone informed on what happens.

Motion by Ms. Martin, seconded by Ms. Kellman, to continue the Show Cause Hearing to repair the failed septic system at 5 Oak Street to the November 18, 2013 Board of Health Meeting with an update to be provided following the Hearing on Thursday, November 24, 2013, to Unanimous approval.

- **6:15 p.m. – Chinmaya Mission, 1 Union Street – Request for Variance to Grease Trap Requirements** – Dr. Dwarakanath excused himself from the meeting and left the room because he is involved with the Chinmaya Mission which would create a conflict of interest. Mr. Carbone explained that when the kitchen was first fitted out, a Watts style grease trap was installed and was the standard available at the time. Sas Durvasula, Trustee for Chinmaya Mission, stated that they updated the kitchen, redid all the walls and put RFP panels on walls floor to ceiling. They cleaned the area completely, and put in stainless steel tables, and hand wash and prep sinks. The grease trap has been cleaned regularly. He emphasized that they only steam cooked rice and vegetables, and that no fish, eggs, meat, or poultry is cooked there. There are no ranges and no open flames. The cooking doesn't require the use of oil, and the cost to put in an exterior grease trap is very high; therefore, Mr. Durvasula would like to get a waiver to allow him to use the manual grease trap which he would replace with a more efficient model in the near future. Ms. Martin asked how the Board would control the situation if a new owner takes over the facility. Mr. Carbone stated that the Board could issue an approval for a year. In this particular case he didn't see the use changing, but if it did, the new owner would have to come in because food licenses are not transferrable. Mr. Carbone explained that they could install a mechanical trap but those are designed to have regular daily flow, and with the small amount of flow, he is worried a Big Dipper would not work the way it is supposed to. After discussion, the Board made the following motion:

Motion by Ms. Martin, seconded by Ms. Kellman, to approve the Variance, subject to the following conditions:

1. *The manual trap shall be cleaned at least once a month.*
2. *A log book shall be kept detailing the date the trap is cleaned, the name of the person performing the work, and an estimate of the amount of material removed.*

¹ The Brief was added to the Agenda Packet after page 16.

3. *All material removed from the trap shall be disposed of in the Mission's rubbish.*
4. *Any change in use or ownership of the property will require that the variance be reapplied for.*

Unanimous approval by Ms. Martin and Ms. Kellman. Dr. Dwarakanath was not present during the approval process.

Dr. Dwarakanth returned to the Conference Room at 6:35 p.m. to finish the Meeting after the Variance Hearing was closed.

- **6:30 p.m. – Sun B. Son for Boston King Café – Show Cause Hearing to Suspend or Revoke a Food Establishment License** – Present were Sun B. Son, owner of Boston King Café, David F. Bernardin, Esq., representing Mr. Son, and Rory Linn, employee. Ms. Martin stated that things had improved so much that the Board released Mr. Son from its oversight at the June, 10, 2013 Board of Health Meeting. It has been over two years that the Board has been dealing with Mr. Son and now there are more critical violations on the Inspection Reports shown in the Agenda packet. Attorney Bernardin stated that he was aware that the Board has had a lot of patience, but noted that when Mr. Son had a Consultant assisting them, there were some promising inspections that showed these issues could be corrected. He has just this week begun to work with Mr. Son on the issues and thinks that Mr. Son doesn't know the seriousness of these issues.

Now he is prepared to have two more people Serve Safe certified, and they intend to show the Board a plan to either continue with the present Consultant or hire a new one. He also plans to hire a professional Chef, like he had at the beginning before the economy went down. Mr. Son is asking for more time to get a good plan together, hire a Chef, get more people Serve Safe Certified and continue to work with a Consultant. Mr. Linn stated that he thought the major problem they had was the Chef. The Chef was expected to keep the prep area clean, but they have no confidence in him to do what the Board of Health wants. Atty. Bernardin agreed that they do plan to hire more qualified people.

Ms. Martin stated that the Board has been giving Mr. Son one more chance several times over the past two years, and now needed something more sustainable. This is a public health issue and is not to be played around with. The Board gave Mr. Son two years, and thought he knew how serious the situation was, since the Board recently closed him down for four days. The Board was assured by Mr. Son that the critical violations would not happen again, but here he is back in front of the Board again. Ms. Martin stated that not having a professional Chef is one excuse and depending on the Chef to solve all the problems just will not happen.

Atty. Bernardin told the Board that he would like the chance to work with Mr. Son to develop a plan, have the Serve Safe Certifications completed and new employees hired. Ms. Kellman stated that the Board hasn't seen understanding about the importance of cleanliness over the past two years. Keeping the kitchen clean should

not be a hard thing to do; at home, she doesn't need someone to tell her to clean the sink. How can the Board have confidence that the establishment will stay clean if after three months it is back in the state it was before. Ms. Martin stated that when the Board left him last time, he took pride and took responsibility for the issues.

Ms. Martin asked how long it would take to hire new staff. Mr. Son replied that he had an ad out today and expects to hire new staff within two months. The Board did not want to allow him to continue without that professional staff in place. Mr. Son and Mr. Linn insisted they would keep everything clean. Ms. Kellman stated that there were more issues than cleanliness. If he depends on a professional Chef to manage the restaurant, what will happen when the Chef is absent for a day.

Atty. Bernardin again stated that he felt they did not realize the seriousness of this issue, and felt that they would do well with more professional staff. Ms. Martin stated that that was the purpose of the closing the last time; to get the staff educated with the help of the Consultant. Dr. Dwarkanath stated that Mr. Son should not need a professional to see the violations; a person only needs a sense of hygiene and cleanliness. Atty. Bernardin stated that if given another chance, he felt the Board would see a dramatic improvement while they try to hire the chef. The next time Mr. Son appears before the Board, they would have a new Chef, a new dishwasher and the other employees will be ServeSafe Certified. If the Inspector sees no improvement by that time and they are still making the same mistakes, then the Board could shut them down.

The Board closed the discussion with staff from Boston King Café to allow a discussion by the Board Members.

The Board discussed the options that it had. It could continue the Hearing until the November 18, 2013 meeting with the requirement to hire a professional cleaner, hire replacement staff as needed and have additional staff be Serve Safe Certified. The Board could shut down the restaurant until a professional chef is in place, or could shut down the business totally. Dr. Dwarkanath stated that he thought the second option was good because it was not permanent and gives Mr. Son time to get things in order and get the restaurant under new management. Ms. Kellman liked the idea of continuing the Hearing until a plan is in place and would offer to meet before the next meeting in November if such a plan is ready and new staff is in place.

Ms. Kellman stated the Board of Health has the responsibility to make sure there is no risk to the health of the community. Mr. Carbone stated that with a business of this size, it is bad to have so many violations and recommended permanent revocation. The Board discussed the option of revocation as opposed to suspension and decided that a suspension would be its choice because it allows more flexibility. The suspension was decided as follows:

Motion by Ms. Martin, to suspend the license until all violations listed in the proposed Order of Revocation are corrected and a plan is presented to the Board of Health for consideration and the remediation is to the Board's satisfaction for reopening.

The Board discussed listing the violations in the motion as well as a time frame for the changes. Ms. Martin restated her Motion as follows:

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to suspend the Food Establishment License for Boston King Café until a specific plan is presented to the Board of Health to address the following specific violations and to have specific measures presented to and accepted by the Board before the license can be restored. The suspension is based on the following:

- 1. Serious and repeated violations of 105 CMR 590.000.*
- 2. Conditions which pose a risk to public health and safety.*
- 3. Failure to demonstrate the ability to understand and implement food safety requirements.*
- 4. Failure to comply with the provisions of 105 CMR 590.000.*
- 5. Failure to maintain proper temperatures of Potentially Hazardous Foods.*
- 6. Failure to prevent possible contamination of food from the environment.*
- 7. Failure to maintain food and non-food contact surfaces in a clean and sanitary manner.*
- 8. Failure to maintain the physical facility.*

Unanimous approval.

III. Discussion

- **Adopt Revised Fee Schedule** – Mr. Carbone explained to the Board that no fees have been changed since 2011 because of the economy. He tries to make changes every year or so for different types of permits, so it is not impacting everyone. Most of the fee increases were Food Establishment Licenses, but there were also some increases in miscellaneous fees. The Board also felt that Tanning and Tobacco were hazardous and as a result wanted to increase the fees a little more for those licenses than the proposed fees. After discussion, the Board approved all the fee increases, with the exception of three that the Board wanted to increase more than Mr. Carbone had proposed.

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to approve the fee schedule as proposed with the following changes:

- 1. Food Service Establishment re-inspection fee (\$100, changed to \$125),*
- 2. Sun Tanning License (proposed fee increase to \$125, changed to \$140)*
- 3. Retail Sale of Tobacco Products License (proposed fee increase to \$125, changed to \$140)*

Unanimous approval.

- **Use of Dropbox for Agenda Delivery** – The Board discussed the use of the Dropbox for Agenda delivery, and decided that the Board Members liked that they could save

paper. The pdf files can be on their devices when they attend meetings and notes can be made concerning any issues the Members may want to discuss at the meeting. The Health office will retain a paper copy of the Agenda items and information.

IV. Old Business – N/A

V. Subdivision Definitive Plans

- A. **Belvidere Heights Subdivision – Amend Approval** – Mr. Carbone informed the Board that when the matter was before the Board, he thought the engineer had missed an amendment to the plan, but really hadn't. There is usually one plan that is used for DPW so they understand what is happening with the roadway itself. Mr. Carbone recommended that the Board amend its approval for the subdivision by striking Condition # 1 which stated "Sheet 4 of the packet must show revised grading around the cul-de-sac and the retention area to match the grading shown on Sheets 5 and 6".

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to strike Condition # 1 from the approval of the Belvidere Heights subdivision. Unanimous approval.

VI. Plan Review

- **DWRP – Variances/Local Upgrade Approval**
- N/A

VII. Staff Reports

A. Director's Reports:

- **Important Dates:**
 - October 23, 24, and 25, 2013 – MHOA Conference
 - October 26, 2013 at 8:20 a.m. – Breast Cancer Screening Program
 - November 18, 2013 at 6 p.m. - Board of Health Meeting
 - December 16, 2013 at 6 p.m. – Board of Health Meeting

B. **Nurses' Reports for August and September, 2013** – The Nurses' Reports for August and September, were for informational purposes only.

C. **Inspectors' Reports for September, 2013** – The Inspectors' Reports for September, 2013 were for informational purposes only.

VIII. Board Member Reports

- **October is Breast Cancer Awareness Month – Breast Cancer Awareness Program (not on Agenda)** – Dr. Dwarakanath stated that he was very disappointed that no attendees showed up for the Information Session on October 15, 2013. He didn't want the Board to be discouraged because this is a good service. He believed that we didn't advertise long enough and that several things factored into the absence of participants. The Board discussed the next session which is scheduled for October 26, 2013 at the Chinmaya Mission for the breast screenings. Mr. Carbone stated that he saw an article in the Boston Globe, they advertised at the Fire Department Open House, the Townsman, and at a Lowell General Hospital event.

Dr. Dwarakanath emphasized that the Board should not get discouraged because it could try something else next year and that he has some ideas to get the word out. Some suggestions were posters in Andover Businesses, videos, posters in doctors' offices, and more extensive advertising. Mr. Carbone stated that he was not convinced people today take time to go to these educational things unless they are personally affected. Ms. Martin stated that people do internet searches for medical information which can be done at their leisure. Dr. Dwarakanath stated that he thought that since there were Mammogram experts and female Doctors present, that would have caused some excitement. There was a newspaper insert for breast cancer awareness that was in the Lawrence Tribune and Mr. Carbone showed it to the Board. It seemed that it was nationally driven articles, but the advertising was local. Dr. Dwarakanath stated that if the response is small for the screenings, we will cancel the session.

IX. Adjournment

Motion by, seconded by, to adjourn at 8:12 p.m. Unanimous approval.